

Notice of Allowability

Application No.

10/669,294

Examiner

Michael Peffley

Applicant(s)

HOBART ET AL.

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3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Nov 13, 2006.
2. ☒ The allowed claim(s) is/are 19-27,29,48,50-53,56-63,65,66,68 and 69.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: applicant's amendments and arguments are deemed to overcome the rejections of record and distinguish the claims over the prior art. With regard to the Drawing Objections and the 35 USC 112, first paragraph rejections, applicant's arguments are deemed persuasive. The examiner had misconstrued the term "side firing delivery fiber optic" to mean a fiber optic that directed radiation in a direction perpendicular to the tip of the fiber optic. Such a definition is commonly used in the art and fairly shown in the art of record (e.g. Vassiliadis et al, US Pat No. 5,129,895). However, applicant has clearly shown the use of side-firing optical fibers whereby energy is fired sideways to the longitudinal axis by bending the fiber optic as shown in applicant's Figures 5b and 5c. The examiner has further discovered other art references that provide a similar definition of a side-firing fiber optic. See, for example, Bruce, US Patent No. 5,416,878. As such, applicant's specification and drawings are deemed to contain proper support for the claimed invention, and applicant's amendments to the specification to call the fiber in Figures 5b and 5c a "side-firing" fiber is deemed a clarification of the record for which there is clear support. With regard to the prior art of record, there is no clear teaching of the particular endoprobe that includes a side-firing, extendable laser fiber with the particular shielding structure as set forth in the claims. McIntyre et al (5,549,601) disclose a device that has an optical fiber that can be extended at an angle. However, McIntyre et al fail to disclose the particular shielding structure, or the trunk optical fiber connection and the source providing bursts of laser pulses. Previously cited Vassiliadis et al discloses a

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typical known side-firing laser fiber, but fails to disclose a shielding structure at the end of the probe since the optical energy is directed in a perpendicular manner. Vassiliadis et al also fail to disclose an extended firing portion for the optical fiber as now set forth in claim 19.

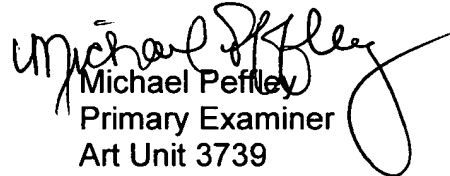
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michael Peffley
Primary Examiner
Art Unit 3739

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January 5, 2007